~~810-27-1-4-.10~~ **810-27-1-.10** Property Factor.

(a) *Property Factor: In General.* The property factor of the apportionment formula shall include all real and tangible personal property owned or used during the tax period to produce business income. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property used in connection with the production of business income but does not include coin or currency. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used in connection with both the production of business and nonbusiness income shall be included in the factor only to the extent that the property was used in connection with the production of business income. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor. See **~~Regulation~~** **Rule** ~~810-27-1-4-.12~~ 810-27-1-.12.

(b) *Property Factor: Property Used for the Production of Business Income*. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period for the production of business income. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, (except inventoriable goods in process) shall be excluded from the factor until such property is actually used for the production of business income. If the property is partially used for the production of business income while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the production of business income shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

(i) EXAMPLE: Taxpayer closed its manufacturing plant in State X and held the property for sale. The property remained vacant until its sale one year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

(ii) EXAMPLE: Same as above except that the property was rented until the plant was sold. The rental income is business income and the plant is included in the property factor until the plant is sold.

(iii) EXAMPLE: Taxpayer closed its manufacturing plant and leased the building under a five-year lease. The plant is included in the property factor until the commencement of the lease.

(iv) EXAMPLE: The taxpayer operates a chain of retail grocery stores. Taxpayer closed Store A, which was then remodeled into three small retail stores such as a dress shop, dry cleaning, and barber shop, which were leased to unrelated parties. The property is removed from the property factor on the date on which the remodeling of Store A commenced.

(v) EXAMPLE: The plant was sold shortly after it was put up for sale. Cases will vary as to the lapse of time until there is a sale. If a closed plant remains unsold for five years after it is put up for sale, it is to be removed from the property factor.

(c) *Property Factor: Consistency in Reporting.*

(1) *Year to year consistency*. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) *State to state consistency*. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property and in the exclusion of property from or the inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) *Property Factor: Numerator*. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

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Authority: Sections 40-2A-7(a)(5) and 40-18-57, Code of Alabama 1975

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